

1 The Honorable Ricardo S. Martinez
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 WASHINGTON STATE ASSOCIATION OF
10 HEAD START AND EARLY CHILDHOOD
ASSISTANCE AND EDUCATION
11 PROGRAM; ILLINOIS HEAD START
ASSOCIATION; PENNSYLVANIA HEAD
12 START ASSOCIATION; WISCONSIN HEAD
START ASSOCIATION; FAMILY
13 FORWARD OREGON; and PARENT
VOICES OAKLAND,

Case No. 2:25-cv-00781-RSM
DEFENDANTS' SURREPLY

14 Plaintiffs,

15 v.

16 ROBERT F. KENNEDY, JR., in his official
17 capacity as Secretary of Health and Human
Services; U.S. DEPARTMENT OF HEALTH
18 AND HUMAN SERVICES; ANDREW
GRADISON, in his official capacity as Acting
Assistant Secretary of the Administration for
19 Children and Families; ADMINISTRATION
FOR CHILDREN AND FAMILIES; OFFICE
20 OF HEAD START; and TALA HOOBAN, in
her official capacity as Acting Director of the
21 Office of Head Start,

22 Defendants.

1 The Court converted Plaintiffs' motion for a temporary restraining order into a motion for
 2 a preliminary injunction and allowed the parties the opportunity to file supplemental briefing not
 3 to exceed fifteen (15) pages. Dkt. 95, pg. 5. Plaintiffs filed a 15-page brief and also filed a dozen
 4 declarations with over 100 pages of disputed facts and legal arguments. Dkts. 107-112. The
 5 declarations should be stricken. *See Local Rules W.D. Wash. LCR 7(g); Estate of Cindy Lou Hill*
 6 *v. Naphcare, Inc.*, 2022 WL 2177542, at *1 (E.D. Wash. Mar. 22, 2022) (courts can use their
 7 inherent power to control their docket, including to strike briefs and pleadings, when a party's
 8 submissions are uninvited or go beyond the scope of a request for supplemental briefing).

9 Plaintiffs' declarations should be stricken as improper legal argument outside the court-
 10 approved page limit. "Declarations ... should not be used to make an end-run around the page
 11 limitations ... by including legal arguments outside of the briefs." *Moussouris v. Microsoft Corp.*,
 12 2018 WL 3328418, at *10 (W.D. Wash. June 25, 2018), aff'd, 799 F. App'x 459 (9th Cir. 2019)
 13 (quoting *King Cty. v. Rasmussen*, 299 F.3d 1077, 1082 (9th Cir. 2002) (citing Fed. R. Civ.
 14 P. 56(e)); *see also Sierra Club v. BNSF Ry. Co.*, 2017 WL 3141899, at *1 (W.D. Wash. July 25,
 15 2017) (striking legal arguments in declarations that were "an attempt to circumvent the reply brief
 16 page limits"). "The court may refuse to consider any text, including footnotes, which is not
 17 included within the word or page limits." Local Rules W.D. Wash. LCR 7(e)(6).

18 Many of the declarations Plaintiffs submitted were filed in the parallel Rhode Island case.
 19 Dkt. 108, Exs. 3-11. While the Court may take judicial notice of court filings in another case,
 20 including that the documents were filed and the date on which they were filed, it may not take
 21 judicial notice of any set of facts set forth in the documents themselves. *See, M/V Am. Queen v.*
 22 *San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983); *Swartz v. Deutsche Bank*,
 23 2008 WL 1968948, at *6 (W.D. Wash. May 2, 2008). The declarations Plaintiffs seek to introduce
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1 contain disputed facts and legal arguments which are not judicially noticeable.

2 WHEREFORE Defendants request the Court strike the declarations filed with Plaintiffs'
3 supplemental briefing because they are not judicially noticeable and they contain disputed facts
4 and legal arguments which go well-beyond the Court's authorized 15-pages of supplemental
5 briefing.

6 DATED this 2nd day of September, 2025.

7 Respectfully submitted,

8 TEAL LUTHY MILLER
9 Acting United States Attorney

10 *s/ Kristin B. Johnson*
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19 Attorneys for Defendants

20 I certify that this memorandum contains 407 words,
21 in compliance with the Local Civil Rules.